

THE NEW SOUTH AND THE JUDICIAL NOMINATION PROCESS, PART I

U.S. SENATOR MARY L. LANDRIEU OF LOUISIANA

On Wednesday, November 12, 2003, the Senate Republican Majority began a 30-hour debate protesting the fact that although Democrats had approved 168 of President Bush's judicial nominees, four had not been confirmed. The hours of debate were evenly divided between senators from each side. Sen. Mary Landrieu of Louisiana spoke twice in the course of the debate, stressing that there is no place for religious or racial bias in the New South. The first speech, the text of which follows, was delivered on the floor of the United States Senate on Thursday, November 13, 2003, at 8:30 a.m.

I would like to respond to a couple of points that the Senator from Tennessee has raised. Let me say first, there really isn't a Member I respect more in the Senate than the new Senator from Tennessee. He and I serve together on the Energy Committee. I am well aware of his very progressive views on civil rights. I am aware of his history as a clerk for one of the finest justices who ever served our country. I am aware of his connection to Louisiana and his work as a southern leader. As a Democrat, I respect the work he did in Tennessee as a Republican Governor of that State and I look forward to many wonderful years working with him. But I would like to answer the question of why many people in the South are upset and concerned about what the Republican majority is calling on us to do today.

I want to start with the charge of the Senator from Virginia: "Stalling, stalling, stalling." The Senator from Tennessee knows very well the Democrats did not ask for this 30-hour debate. The Republican leadership is stalling the Veterans bill, the Energy bill, and the Housing bill. I have 400,000 veterans in Louisiana. The Senator from Tennessee must have 500,000 veterans in his state. These bills are pending while we debate whether or not it is fair to block four of 172 nominees – four of 172!

The second point I want to make is that the Senator from Arizona came to the floor and referred to the people who are listening – and we do believe the country is interested in the debate here in the Senate – that these four individuals were "not given a trial." I think the words were "hung without a jury," or some such inflammatory language.

Please let me say for the record that these four judges were given hearings. The nominee from Texas, Priscilla Owen, had a full-day hearing; the nominee from Alabama, Judge Pickering, had two days of hearings, and one day came right after the anthrax attack. The Capitol was literally under attack, and we felt so strongly about providing a hearing that the nominee was given a hearing the day after the attack.

Mr. Estrada was given a one-day hearing, and Mr. Pryor was given a one-day hearing. So the notion that these nominees have not been given their day in court, time to express their views and to answer questions, is absolutely false. That is in stark contrast to 57 of President Clinton's nominees. Let me repeat: 57 out of 63 didn't get one minute of a hearing – not one minute.

These four we have blocked for reasons that my colleagues and I will go into, and they have been blocked for very good reasons. However, all of them got a hearing. I just wanted to make that clear. I know the Senator from Tennessee will remember those hearings in the Judiciary Committee.

The third point I want to clarify is the Senator from Utah said he would never deny a nominee the opportunity for a vote on the floor. The record will reflect that the Senator from Utah has voted seven times against cloture for giving a nominee – not a judicial nominee but an executive-level nominee – a vote on the Senate floor.

I urge Senators not to use words such as “never” or “every” because the fact is, filibusters have been attempted over the course of our history: In 1968, in 1980, in 1994, and in the year 2000, but they haven't been successful. This filibuster is successful for one reason only: The American people do not want these four judges on the bench. They just do not want them on the bench, and they are expressing that through the Democrats here in the Senate. I will tell you why.

Let me talk about Mr. Pryor briefly. I know I am going to aggravate some Democrats when I say this, but I was willing to vote for Attorney General Pryor, and I had so informed the Senator from Alabama, who is a good friend and someone with whom I really enjoy working, who is more conservative than I but I really do trust him in many

ways. We talked about it, and I was prepared to vote for Mr. Pryor until this ad appeared. Let me read it to you:

“Judicial Chambers: Catholics need not apply.

Why are some in the U.S. Senate playing politics with religion?”

I am a Catholic. When these ads are run by right-wing groups that want to divide this country – Catholic against Protestant, Gentile against Jew, man against woman, straight against gay – something inside me just boils up. When the Republican leadership tells me that I have a problem with Catholic judges, they may not realize that my father is a Catholic judge and my sister is a Catholic judge. I don't have problems with Catholic judges. I don't have problems with William Pryor. I have problems with this red-meat rhetoric that is anti-American, anti-constitutional, and defies every principle that our men and women are in Iraq fighting and dying for. It is not a matter of whether you are Catholic, whether you are Jewish, whether you are Protestant. You should be judged on qualifications. And so I have informed the Senator from Alabama that until the National Republican Party repudiates this ad and the chairman of the party stands up to say these ads have no place in the public debate, this nominee will not get my vote – not because he is pro-life and I am pro-choice, but because of this ad.

I will tell you the people in my State are tired of it. I have Catholics and Protestants who want to be united, who want to be together, who want to create jobs, who want to help veterans, who want to figure out the problem in Iraq. They are so tired of the Republican leadership using religion or race to wedge everyone apart. I know Democrats aren't completely innocent of these tactics, but it has gotten to the point where it has basically shut down the work here in the Senate. I want to be clear. My father is a Catholic judge; my sister is a Catholic judge. I am not against Catholic judges. But we are against ads like that, and until they are repudiated we will not allow this nominee to go forward.

I don't even know if I want to go into Judge Pickering from Mississippi. I know he is from a fine family. I know his son well. He is a wonderful man serving in Congress. I know he has beautiful grandchildren, and he has a wonderful family. But I will say this: The Senator from Tennessee should know this better than anyone because he is part of

the New South. I think his whole life has been spent helping us in the South deal with the terrible issue of discrimination. It breaks your heart to think about what the laws did to people – crushed their spirits, crushed their lives, robbed them of the opportunity for anything. I grew up in that kind of place. I spent my whole life trying to change it, and I know he has, too.

One of the reasons we have stopped the Pickering nomination is that many of us – and I don't think it is just Democrats, it is Republicans and Independents in the South – want the nominees on the Fifth Circuit to be about the new South, not the old South. To many of us, many of the moderate, middle, mainstream civil rights organizations, the Pickering nomination is about the old South. There are hundreds of qualified judges, white and black, who really sacrificed for civil rights. Why couldn't we have somebody with strong civil rights credentials on our bench? They don't have to be liberal. They could be moderate or conservative. Why do we have to reach back and find someone from the past? Why not reach forward?

When Judge Pickering graduated law school, he asked his friend to join him in the practice of law. That law partner belonged to the Mississippi Sovereignty Commission. My father got out of law school a few years before he did, in 1954. Judge Pickering got out in 1961. My father never in 100 years would have asked a member of the Louisiana Sovereignty Commission to be his law partner. It just wouldn't have happened, because our family was a civil rights family. We rejected everything the Mississippi Sovereignty Commission or the Louisiana Sovereignty Commission or the Alabama Sovereignty Commission did, which was to basically intimidate African Americans. No matter how good they were, no matter how hard they worked, no matter how talented they were, no matter how many times they went to church or how much they loved their children, because they were black, they couldn't get a job, they couldn't live in the neighborhood of their choice – that is what the sovereignty commissions made sure of.

So you are asking me, after spending 40 years of my life fighting against this, to stand here and say it is OK to appoint someone like this to the bench? And then get upset when I say I have a problem with that? Well, I do have a problem with it. Most of the people in

my State have problems with it, because, believe me, there are a lot of people in Mississippi who were in the civil rights movement on the right side of the movement, not the wrong side; the forward side, not the back side. And I will tell this President or any President, we are looking for nominees that represent the future, not the past. We are looking for a new South, and we reject the old South.

I know my time has expired, and the Senator from Iowa is in the Chamber. I thank him for his great patience. I am sorry I got a little exercised, but I guess coming from the part of the country I do and being Catholic, it has been very hard to have to hear some of the rhetoric that is thrown around on this Senate floor. Again, I have the utmost respect for my friend, the Senator from Tennessee. He has been a real leader in this effort. I yield the floor and acknowledge the Senator from Iowa who is here to speak.

THE NEW SOUTH AND THE JUDICIAL NOMINATION PROCESS, PART II

U.S. SENATOR MARY L. LANDRIEU OF LOUISIANA

On Wednesday, November 12, 2003, the Senate Republican Majority began a 30-hour debate protesting the fact that although Democrats had approved 168 of President Bush's judicial nominees, four had not been confirmed. The hours of debate were evenly divided between senators from each side. Sen. Mary Landrieu of Louisiana spoke twice in the course of the debate, stressing that there is no place for religious or racial bias in the New South. The second speech, the text of which follows, was delivered on the floor of the United States Senate on Thursday, November 13, 2003, at 10:30 p.m.

Much of the focus during this debate has been on numbers: How many nominees have been confirmed, how many nominees have been denied. I'd like to help put some of those numbers in context. Ninety-eight percent of the judges that were sent to this Senate by President Bush have been approved – 98 percent. There are not many people in America, white, black, Hispanics, women, or men, who think the Senate should approve 100 percent of any President's nominees, particularly a President who did not win the popular vote. In the last presidential election, George Bush received 50,456,169 votes; Al Gore 50,996,116. So 500,000 more people voted for Vice President Gore than President Bush. He won by a handful of electoral votes in Florida, and we know that. The Court decided it. I am not complaining about it, but it goes to the point that numbers are important.

Let me tell you about another number—63! Sixty-three of President Bill Clinton's nominees were blocked in the Senate. They weren't debated in the open, like tonight where there are no secrets and we can all speak about what we believe. These nominees were held up in secret, and not by many Senators who represent millions of people, but maybe by one Senator who just decided he or she didn't like the nominee, and so they would not sign the blue slip signaling their approval.

Technically, the majority is correct that the Senate has never before successfully filibustered a judicial nomination, but that wasn't for lack of trying. They tried to filibuster judicial nominees on this floor, but they didn't succeed, because their

arguments weren't strong enough to make them successful. The only way a filibuster can survive is if the truth of the argument is strong enough to stand up to a challenge. That is the only way a filibuster survives. That is why this filibuster survives, because the truth is always stronger than a lie.

I want to tell the Republican majority something quite simple: This country, despite your best efforts, will not be divided. No matter how vicious your rhetoric about Protestants, and Catholics, and blacks, and whites, and Hispanics, and women, we refuse to be divided. In a time of war, when the country is under assault and we have men and women dying in Iraq, it is the height of disrespect and pettiness to come to this great floor and say that this woman Senator, who has spent 25 years in public office, doesn't want women or African-Americans to be judges.

The majority party must forget where I am from. I would like to remind them that I am from a place called Louisiana. In the 63 years before Rosa Parks decided to sit down in her seat because her feet were so tired she couldn't move, a man named Homer Plessy decided he would get on a rail car that was entitled "whites only." He got on that rail car in New Orleans, my hometown. He rode on the train, and he knew he would be arrested. But a group of lawyers, African-American men, had decided that he would be the right one. Why? Because he was white enough to "pass," to get on the train, and black enough to be arrested. And that is exactly what happened.

Forty years before the Civil Rights Act, Plessy rode that train and the great movement began to free people who had been slaves for 300 years.

Tonight, I have to sit in the Senate Chamber and listen to the Republican Majority argue that, in the whole country, they can't find a better African-American woman than Janice Rogers Brown to serve on the bench, to hold up the convictions of Rosa Parks, to honor the work of Louis Martinet, and to honor the memory of Homer Plessy. I am going to read to you what this nominee said in a speech to the Federalist Society on April 20, 2000, and you decide for yourself if you think this is mainstream or not:

“Some things are apparent. When government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is families under siege, war in the streets, the precipitous decline of the rule of law, the rapid rise of corruption, the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.”

What do you think Rosa Parks thought when the federal government came down to Alabama and said, Lady, you don't have to suffer anymore. You think that Rosa Parks thought that government was bad?

Let me share what this ‘mainstream’ woman thinks of all the grandparents in the United States:

“My grandparents’ generation thought being on the government dole was disgraceful, a blight on the family honor. Today's senior citizens blithely cannibalize their grandchildren, because they have a right to get as much "free stuff" as the political system will permit them to extract.”

Excuse me, but on behalf of all the grandparents I represent, this is an insult to every single one of them who raised their children, and then when some of their children got into trouble, raised their grandchildren or great-grandchildren. They did this on their Social Security paychecks of \$672 a month, which the Republicans refuse to raise, and a minimum wage of \$5.50, which they also won't raise. You are asking me to put a woman on the court who insults the grandparents of Louisiana? Take your dossier and go somewhere else.

Now, if these people are in the mainstream, then I don't know what mainstream we are talking about, because it is not mainstream in Louisiana, and that is what this debate is about.

The Senate Democrats didn't choose to have this filibuster. We were made to have this filibuster because the Republicans think they can divide the country, split us up and cause trouble. I will tell you what people at home want. We are in a war. The people at home want us to be united and fight together. But the Majority would have us fighting against

Catholic, Protestant, rich, poor, young and old. It is a disgrace, and it is not the Democrats' fault. It is the fault of the Republican Majority.

I will say this: I know the men and women who serve on the other side of the aisle, and individually they are fine. But, boy, collectively they can sure get themselves up into a lather. The country deserves better. The people want better.

We have an Energy bill to pass; we have appropriations bills to pass; I have 400,000 veterans in my State who are looking for help, and they turn on the television to see the chairman from Utah saying that the women in the Senate don't want women on the bench, and we don't want Hispanics on the bench, and we don't want African Americans on the bench? Whoever heard of such ridiculousness?

I beg this body; let's stay on the facts. The facts are that we have approved 98 percent of President Bush's nominees. We have rejected people such as Janice Rogers Brown, and no matter how many times they bring her up, she will be rejected because she makes statements like this that are an insult. She is not going anywhere. We will vote on her 100 times. She will never get on the bench.

We just made a call to the National Bar Association, which is the most distinguished group of African-American lawyers in the country. This group of lawyers would surely know the history of the civil rights movement. They would surely understand the characters and people I have talked about, and all the stories and all the drama. You would think that President Bush, who ran on 'compassionate conservatism,' and the Republicans who keep saying they are reaching out to African-Americans – they say, We want to reach out to African-Americans, we want to go and put African-Americans on the bench – you would think that sometime in the last three years they would have called the National Bar Association, or the President would have called the National Bar Association and said: Look, I'm a conservative. You all probably are more liberal as a group, although there are probably some conservative members. Why don't you give me a recommendation, knowing that I can't support a real liberal judge? If you work with me,

we could get some really good African Americans on the bench who are highly qualified and that the Democratic majority would like. I would feel happy about that. We are in a war. It would be really important for us to unite our country.

Do you think he ever consulted with them? No. The President, this White House, the Republican leadership never called the National Bar Association, the most prestigious group of African-American lawyers, to just ask them. Is there any conservative judge, moderate conservative judge you all would recommend I appoint?

For the Majority party, this is not about doing what is right. This is about winning elections and ginning up the far right in the wings. I understand that. It has been done before, but not during a war. Not when people are dying. It is just not right. So we could stay on the floor all night, all tomorrow, all next week, but I tell you the people in this country are going to have enough of it pretty soon because they don't believe this is right. They can tell when something is not moving in the right direction.

I will end with this: No matter how hard the Republican Majority tries to divide us, we will not be divided. We are going to stand united. We are going to speak the truth. We will debate in the open why these nominees do not deserve to sit on the bench and why we will filibuster these nominees. We will continue to do that until the people decide in the next election what kind of America they want. In my heart I believe they want an America that is united, not divided.